

## CHAPTER 2 – ADMINISTRATIVE OVERVIEW

### ADMINISTRATIVE REQUIREMENTS

Subrecipients of CDBG funds from the State of Nebraska must comply with all administrative requirements. Subrecipients must become educated on all administrative components, elements, and requirements of the CDBG Program. The Department recommends that subrecipients develop a project management plan to assist in compliance. The management plan should include a list of responsibilities for each project team member, a timeline of implementation steps, and a detailed outline of a filing system.

The requirements in this manual provide subrecipients with standards for administering the CDBG Program in a consistent manner. These requirements are in addition to the Federal Housing and Community Development Act (the Act), as amended. The federal requirements for the program are described in 24 CFR Part 570, 24 CFR Part 85, and the Super Circular [2 CFR 200, including 2 CFR 200 Subpart F-Audit Requirements, as was previously identified in OMB Circular A-87 (2 CFR, Part 225) and OMB A-133 but replaced by the Super Circular information].

Department guidance is a supplement to federal and state requirements enumerated and discussed in brief within this manual. **Subrecipients are responsible for understanding and complying with federal or state requirements located within the original source.** In some instances, the Department may require a more stringent approach in which case those requirements are detailed.

The period of performance identified within the subrecipient agreements, will determine the specific regulations that a subrecipient will be responsible for complying with, 2 CFR 200 will only have applicability in specific situations. Per 24 CFR 85.1(b) “...Federal awards made prior to December 26, 2014 will continue to be governed by the regulations in effect and codified in 24 CFR part 85 (2013 edition) or as provided by the terms of the Federal award. Where the terms of a Federal award made prior to December 26, 2014, state that the award will be subject to regulations as may be amended, the Federal award shall be subject to 2 CFR part 200...”. Overall agreements, unless amended or extended, that were executed prior to December 26, 2014 remain in effect with compliance requirements under 24 CFR 85.

**All subrecipients who receive CDBG funds are required to procure or employ a CDBG certified administrator.** In many cases this is done through agreement with a firm or organization providing such services but in others, it may involve use of subrecipient’s staff also having received certification.

### ELIGIBILITY

Eligibility requirements for participation in the CDBG Program are specified in the Application Guidelines that are published annually and are consistent with the Annual Action Plan for the CDBG Program. The Department will approve only those activities that meet one of the CDBG National Objectives set forth in Section 104(b)(3) of the Act and are otherwise eligible within the project funding opportunity.

### ADMINISTRATIVE TRAINING

The Department provides training on administering CDBG through the Certified Administrators Training Program. Find information on upcoming workshops and other training opportunities at the Department’s website, [opportunity.nebraska.gov/events](http://opportunity.nebraska.gov/events).

The principal contact at the Department for information on a particular CDBG project is the Program Representative assigned to the project. The Program Representative is familiar with the project and assists the subrecipient and the CDBG certified administrator with implementation.

### **BASIC INFORMATION FOR ADMINISTRATION OF A CDBG PROJECT**

The following is an overview of the stages for a CDBG-funded project. The CDBG Program consists of multiple opportunities of funding, which may include additional requirements not listed below. Reference the appropriate funding opportunity's application guidelines available on the Department's website, <https://opportunity.nebraska.gov/CDBG>.

#### ***Application***

Funding within the CDBG Program is available to local units of governments on a competitive and non-competitive basis. The Department notifies the public when CDBG application guidelines are available for an upcoming application cycle. The guidelines describe eligible applicants, eligible activities, the application process, and application deadlines.

The Department also conducts CDBG Application Workshops annually. Prior to completing an application, it is beneficial to contact Department staff.

#### ***Notice of Approval or Non-Select***

Following the Department's application review period, all applicants will receive notification regarding the status of their application. Those applicants that are not funded in an application cycle are encouraged to contact Department staff to determine ways in which project design and application development can be improved for future applications. Letters of Non-Select may also include some basic information regarding reason(s) for not receiving funding.

The Notice of Approval (NOA) informs each applicant that had an approved application of the amount and type of funds awarded and the activities to be undertaken with the funds. Only costs related to general administration and the preparation of the Special Conditions related to the agreement can be incurred beginning the date identified on the Notice of Approval.

#### ***Administrative Costs***

Administrative costs, which do not meet a national objective, are the reasonable costs of overall program management, coordination, monitoring and evaluation. In contrast, project or activity costs are those related to the implementation and execution of the activity and can be classified as a delivery cost.

A Subrecipient may be reimbursed for approved administrative costs provided:

- the costs are reasonable for the services provided and are in accordance with 2 CFR 200 subpart E, 24 CFR Part 85, or 24 CFR Part 570, and the rules and regulations of the program and do not exceed the amount authorized, as amended, in the agreement, unless the Department has provided prior written approval;
- the costs are incurred following written Notice of Approval;
- the amount of compensation charged to the program is based on payrolls documented and provided in accordance with generally accepted practices of state and local governments; and
- if applicable, the subrecipient has followed Super Circular guidance under 2 CFR 200; 24 CFR Part 85 for agreements entered prior to December 26, 2014 as noted above; or 24 CFR Part 570 when contracting with consultants.

If the subrecipient withdraws from the program at any time, the Department reserves the right to determine the amount of funds to reimburse to, or recapture from the subrecipient for incurred administrative costs.

The Department may reduce the amount of administrative funds requested if it is deemed excessive.

### ***Supporting Project Costs and Project Costs***

Separate from administrative costs are *supporting project costs* and *project costs*. Unlike administrative costs, those costs associated with supporting project delivery costs (e.g., construction management and housing management) and project implementation costs (e.g., public facilities, street improvements, housing rehabilitation, etc.) must meet a national objective.

### ***CDBG Agreement***

The Department will send the subrecipient a CDBG Agreement after, or with the, the Notice of Approval (NOA). Any items requiring revision within the application related to project activities, etc. should be received by the Department *prior* to an Agreement being fully executed. Where the subrecipient identifies a need to request a change to the Sources and Uses *prior* to execution of the Agreement by the Department, contact your Program Representative.

The agreement contains several items that include: a project description, time of performance, sources and uses of funds, conditions governing the use of CDBG funds, and the Special Conditions for Release of Funds. The agreement must be signed by the recipient and returned to the Department within 30 days.

In general, the Special Conditions of the Agreement must be satisfied within 90 days (three months) after the issuance of the Notice of Approval Letter. Projects are generally completed within twenty-four to thirty months.

The Agreement between the Department and the subrecipient also provides information for termination for cause and/or for convenience. In the event the Department suffers a loss of funding or termination of the federal grant that permits it to fund in full or in part a CDBG grant, the Agreement will terminate in full or in part.

### ***Special Conditions for Release of Funds/Environmental Clearance***

Recipients of CDBG funds are advised to carefully review their CDBG Agreement before implementing the funded project. Project costs cannot be obligated or incurred prior to the Department issuing a written Notice of Release of Funds/Environmental Clearance to the Subrecipient.

Each Agreement has a section titled “Special Conditions for Release of Funds” that includes information on the various items that the subrecipient must provide to the Department in order to obtain a Notice of Release of Funds/Environmental Clearance and have the ability to expend CDBG resources on implementation activities. These Special Conditions must be satisfactorily completed by an identified date, or the Department reserves the right to cancel the Agreement if the special conditions are not met within the specified time frame.

In general, the Special Conditions found in each Agreement include:

- Subrecipient Information Sheet
- Environmental Review Record
- Language Assistance Plan

- Authorization to Request Funds
- Financial Management
- Procurement Standards and Code of Conduct
- Excessive Force Certification
- Fair Housing
- CDBG Certified Administrator

**NOTE:** The above list represents a list of typical standard special conditions, however all CDBG Agreements are tailored to a specific project with unique standard conditions. Other special conditions may address items related to program guidelines or, relating to a past grant, deficient reporting or any unresolved audit or monitoring findings.

All Special Conditions for Release of Funds in the CDBG Agreement must be satisfied before the Notice of Release of Funds/Environmental Clearance will be issued for that project.

Additional guidance on fulfilling agreement conditions is available in Chapter 5 of the manual. The Department's website, <https://opportunity.nebraska.gov/CDBG>.

#### ***Notice of Release of Funds/Environmental Clearance***

Upon receiving a Notice of Release of Funds/Environmental Clearance, the subrecipient may obligate non-administrative costs and draw down funds for eligible costs incurred. A Notice of Release of Funds/Environmental Clearance may not be issued if there are any unresolved audit findings relating to a past grant or there is information in the audit regarding extreme misconduct.

#### ***Requesting CDBG Funds***

The request by the subrecipient for CDBG funds is made using the "Request for CDBG Funds" form. All requests for CDBG funds are completed through the Department's grant management system, AmpliFund. For more information regarding requesting CDBG Funds refer to Chapter 12 of the CDBG Administration Manual and the AmpliFund user guides<sup>1</sup>. Source documentation must include and substantiate the amount of CDBG funds requested and the associated matching funds.

#### ***Matching Requirements/Other Funds/Leverage***

The availability of matching funds is part of the CDBG Agreement. Subrecipients must ensure that funds are available for expenditure during the project period. Matching funds may be cash or in-kind contributions as defined and governed by 24 CFR Part 85, 2 CFR 200 Subpart E, and 24 CFR Part 570, or unless restricted by category application guidelines. Activities serving as match must be an eligible CDBG activity and procurement procedures must be followed.

Subrecipients are required to certify on each "Request for CDBG Funds" form the amount of local and matching funds applied to the project. Project costs are to be paid from grant and local matching funds in the proportions approved in the agreement. Local funds expended for an activity for which no match is required may not be counted as part of the matching funds required in other activities.

**Match is proportionally injected** into the project as CDBG-funded activities are drawn down. If the Subrecipient is unable to provide local matching funds in the exact proportions stated in the agreement for all expenditures, a temporary waiver may be requested. The waiver request must include:

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<sup>1</sup> <https://opportunity.nebraska.gov/amplifund/>

- A letter from the Subrecipient signed by the Chief Elected Official which states the reasons for the request, and
- The period of time for which the waiver is requested.

### ***Agreement Amendments***

During the course of administering a project, situations may occur that require a change in the original terms of the CDBG agreement. These changes are referred to as agreement amendments.

Subrecipients must request approval from the Department for **any modification or amendment** to the CDBG agreement. When submitting the request for approval, the subrecipient must complete and submit the CDBG Agreement Amendment Request Form to the Department within AmpliFund.

Common amendment requests include:

- Revisions to the budget
- Extensions of the agreement end date
- Decreases in proposed accomplishments
- Amendments to program guidelines

The Department will review amendment requests using the following factors:

- The effect the amendment will have on the points earned in the selection process,
- Whether the amendment is appropriate and will enhance the overall impact of the original project,
- Subrecipient's performance and capacity (may require an on-site visit), and
- Any other relevant information.

The Department informs the subrecipients in writing the amendment approval or denial. In most cases when the amendment is approved, the Department will provide the subrecipient with a formal agreement amendment, which will need to be executed by the subrecipient and the Department. In other cases, the Department may simply notify the subrecipient in writing that the modification has been approved. Subrecipients should never assume that an amendment has been, or will be approved, and no action should be taken until written approval from the Department is received by the subrecipient.

Subrecipients should be aware that changes to the budget that allocate funds from one activity to another activity may require the subrecipient to provide additional matching funds for the project, as the proportion of match to CDBG funds that was approved during the application phase must be maintained when the budget is modified.

### ***Conflict of Interest***

As a general rule no employee, officer, or agent of the subrecipient will participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: the employee, officer or agent; any member of their immediate family; their partner; or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The subrecipient's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements, during office tenure or for one year after the closeout of the grant. For more information, see 24 CFR 570.611 and HUD guidance including Integrity Bulletin: 7 Keys to Handling Conflicts of Interest.

Refer to Chapter 7 Procurement for conflict of interest through competitive proposals for professional services procurement. Professional services include general administration, construction management, housing management, lead-based paint, and other non-project specific services.

### ***Recordkeeping Requirements***

Subrecipients must establish a system for recordkeeping that assists the Department's review of files for compliance. In other words, records should be kept in a manner that clearly tells the whole story of a CDBG project from beginning to end. A tool that the Department prescribes is using the monitoring checklist as a guide for the organization of grant files.

Financial records, supporting documents, statistical records and all other records pertinent to a grant will be retained for a period of ten years after closeout (certificate of closeout) of the grant. The ten-year rule is not applicable if:

- Any litigation, claim or audit is started before the expiration of the ten-year period, the records will be retained until all litigations, claims, or audit findings involving the records have been resolved;
- Records for nonexpendable property acquired with CDBG funds will be retained for four years after its final disposition; or
- When records are transferred or maintained by the Department. The Department may request the transfer of certain records to its custody or to HUD when it determines that the records possess long-term retention value.

Representatives of HUD, the Inspector General, the General Accounting Office, the Comptroller General of the United States, the State Auditor's Office, and the Department or any of their duly authorized representatives will have access to any pertinent books, records, accounts, documents, papers, and other property belonging to or in use by the subrecipient or sub-subrecipient in order to make audits, examinations, excerpts, or transcripts.

### ***Reporting Requirements***

The Department requires subrecipients to report on grant progress throughout the life of the project. These reports include, but not limited to:

- **Semi-Annual Project Status Reports:** Reporting is required throughout the grant, following Notice of Approval and until completion of all non-administrative activities. All subrecipients must submit this report every six months and within 30 days of the last date of reporting period<sup>2</sup>:
  - December 31 reporting period, due January 30 and
  - June 30 reporting period, due July 30.
- **Job Creation/Retention Reports:** Subrecipients funded under the economic development category and other subrecipients funded with job creation and/or retention as the national objective must submit this report every six months by January 30 and July 30.
- **Program Income Reports:** Subrecipients must report on program income earned from CDBG projects every six months by January 30 and July 30.
- **Notification of Annual Audit:** Subrecipients must submit this report for each subrecipient fiscal year that CDBG funds are expended.

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<sup>2</sup> This may be adjusted by the Department.

**Final Reports:** in addition to the above reporting requirements, the Department requires submission of a Final Project Status Report, Final Financial Report (including leverage<sup>3</sup> documentation, where applicable), and a copy of the affidavit and minutes for the second public hearing for every project before closing out the project. For more information about final reporting items, reference Chapter 16 – Closeout.

Refer to Chapter 13 for additional information.

### ***Capacity, Performance and Compliance Monitoring, and terms of Good Standing***

The Department conducts two basic types of monitoring that includes desktop and onsite/virtual monitoring in order to review a subrecipient's progress of their project. Refer to Chapter 14 for more information.

During monitoring compliance review, a determination may be made that a subrecipient and/or certified administrator lacks continuing capacity to implement a CDBG project. Contingent upon the unique circumstances of each grant, the Department may consider the subrecipient performance and Certified Administrator performance independent or dependent of each other. In general, the **subrecipient is responsible for compliance** with the CDBG Program, the Certified Administrator assists in assurance of compliance and good standing of subrecipient.

Capacity is reviewed as a part of application process and throughout the life of the individual grants (i.e., prior performance or compliance issues may reflect on future awards). Overall, good standing for subrecipients and certified administrators requires:

1. **Timely completion and submission of required documentation and/or reports:**
  - a. Special conditions, including accurate and complete environmental review documents.
  - b. Reports, including accurate beneficiary data, MBE/WBE and Section 3 reporting, Monitoring Exhibits.
  - c. Final reporting and project closeout materials.
2. **Timely performance**, including for all open activities for each CDBG-funded project, submission of draw requests at least every six months.
3. **Responsiveness**, including:
  - a. Responses to Department staff with information requests, project updates, and other materials requested.
  - b. Resolution of all missing items or deficiencies identified in monitoring process within 30 days of issuance of monitoring report.

**Subrecipient performance:** If at any time the Department determines that the objectives set forth in the federal regulations, the Administrative Requirements, or the approved program have not been met, the following procedures may be utilized:

- 1) **Warning:** A written warning will be issued when a violation of a program requirement has occurred. This warning will cite the violation, and if the violation is occurring, a deadline when it must be remedied.

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<sup>3</sup> Leverage was an aspect of the CDBG program in prior years. Program Year 2018 (July 1, 2018 – June 30, 2019) was the last year that the Department incorporated and allowed leverage within the method of distribution of CDBG funds. If you are unsure if a CDBG project has leverage, review the CDBG Application, Subrecipient Agreement, and contact the Department. If leverage is incorporated, the Department will provide you additional guidance.

- 2) **Suspension:** Grant funds will be discontinued for any grant which is found to be in noncompliance and for which corrective action by the subrecipient has not been initiated. Funding may be discontinued for the entire project or for a specific activity. Funding may be reinstated upon the correction of the violating condition.
- 3) **Reimbursement:** The subrecipient will be required to reimburse CDBG funds that have not been spent in accordance with the approved application and program requirements. The amount of the reimbursement will be determined by the amount that has been disallowed and for which no other costs may be substituted.
- 4) **Payment Adjustments:** If the subrecipient has not demonstrated responsible fiscal and administrative capacity, the Department may adjust the payment method in which the grant funds are disbursed.
- 5) **Grant Adjustment:** Grant awards may be adjusted, reduced or the total amount withdrawn when there is noncompliance and the violation cited has not been remedied as specified.
- 6) **Nonparticipation in the CDBG Program:** Subrecipients which have not complied with actions administered by the Department may be prohibited from future participation. The Department may allow subrecipients to participate in the program if the subrecipient has complied with the required actions.
- 7) **Full or Partial Termination:** The CDBG agreement may be terminated in whole or in part if the Department determines that the subrecipient has failed to comply with its terms and conditions. Payments made to the subrecipient or recoveries by the Department will be in accord with the legal rights and liabilities of the subrecipient and the Department.

**Certified Administrator performance:** As stated above, the Certified Administrator assists in assurance of compliance and good standing of subrecipient. However, where there exists a pattern or misguidance, some performance and compliance deficiencies, concerns, and findings can be attributed to the Certified Administrators. See also Certified Administrator Requirements section below.

### ***Closeout***

Closeout is the process in which the Department determines that all requirements of the agreement between the Department and the Subrecipient have been completed. After the completion of project activities several items must be completed by the subrecipient in order to obtain a Certificate of Closeout. Refer to Chapter 16 for more information.

### **CERTIFIED ADMINISTRATOR REQUIREMENTS**

All subrecipients who receive a CDBG grant from the Department, or those communities with CDBG program income revolving loan funds, must have a CDBG Certified Administrator. The Certified Administrator is the person in charge of the project on a day-to-day basis and may be an employee of the subrecipient or a consultant that has been procured for and under contract with the subrecipient. The Certified Administrator works with the subrecipient to ensure the project and parties involved are in good standing. All certifications will expire on the last day of the specified calendar year.

In order to obtain a Notice of Release of Funds/Environmental Clearance, the subrecipient must identify the Certified Administrator for the project as part of the Special Conditions of the subrecipient agreement. Below is specific information for CDBG Certified Administrators.

In order to be a CDBG Certified Administrator, a candidate must complete:

- 1) Attendance at a designated Certification Workshops and/or comparable training event;
- 2) Successfully complete the Certification written exam; and



- 3) No outstanding balances for training events, which includes registration fees.

There are two primary classifications of certified administrators:

- **Provisional Certified Administrator** describes an individual newly certified for the first time, an individual that allowed their certification to lapse, or an individual that has obtained their certification following a period of “de-certification”. This classification may also include those certified administrators subject to a conditional term, or probationary term related to performance and/or compliance issues. Unless otherwise specified and informed by the Department, provisional certification has a term of three years from date of certification, ending on December 31<sup>st</sup> of the third year. Re-certification must occur prior to expiration. On rare occasions, an administrative certification extension may be issued by the Department.
- **Experienced Certified Administrator** describes an individual that has been in good-standing and maintained their certification. Unless otherwise specified and informed by the Department, participants in the experienced certification are subject to a term of four years from date of certification, ending on December 31<sup>st</sup> of the fourth year. Re-certification must occur prior to expiration. On rare occasions, an administrative certification extension may be issued by the Department.

#### ***Certified Administrator Required Knowledge, Duties, and Performance Overview***

Certification by the Department is based upon the premise that the person who will be assisting a subrecipient in meeting CDBG requirements must have a high level of proficiency in all areas of CDBG project management. Significant knowledge of the federal CDBG program, as implemented and administered by the Department, is required. A successful Certified Administrator should have four primary skill sets that include:

- Ability to understand, interpret, and apply federal regulations;
- Basic knowledge of community-based and economic development programs;
- Leadership ability; and
- Organization and management skills.

These mentioned skills will be utilized to perform several duties and responsibilities that include, but are not limited to, ensuring subrecipient meets and/or complies with:

1. All federal and state laws, regulations, and policies that are relevant to the project.
2. All of the Special Conditions of the Subrecipient’s Agreement within the specified time frame stated in the grant agreement in order to obtain the Notice of Release of Funds/Environmental Clearance.
3. All federal, state, and local requirements for procuring professional services and construction services.
4. Financial management requirements associated with the CDBG grant, including having an appropriate financial management system in place.

In addition, Certified Administrator must ensure:

1. Timely and accurate submission of at least one draw per activity during a six-month period.
2. All environmental, labor, acquisition, and relocation requirements are followed over the course of the project.
3. All reporting is submitted to DED by required deadlines.

4. Proper closeout and compliance review of each CDBG project is completed that meets all federal, and state reporting requirements.

## **CERTIFICATION PROCESS AND REQUIREMENTS**

Participants seeking certification (provisional or experienced) must participate in a training and pass an exam which covers the content of the training and materials thereof. On an annual basis, DED offers two formal trainings, Provisional Certification and Re-Certification Training.

### ***Provisional Certification Process***

Provisional Certification Training is intended for those persons who are seeking the Certified Administrator designation and either are receiving certification for this first time or following a conditional certification, or term of probation, lapse of certification, or de-certification. The training will provide comprehensive training on CDBG topics and provide individuals with the necessary information to effectively administer a project.

At the conclusion of the training, each person seeking the Certified Administrator designation must complete the written certification exam consisting of questions that cover the primary CDBG topic areas. The exam will be open book, but only the Nebraska CDBG Administration Manual, and any other materials provided during the training may be used during the testing.

Each person taking the Certification Exam must receive a passing score in order to be a CDBG Certified Administrator. Those persons who do not receive a passing score on the Certification Exam will not be certified.

The Department will notify individuals who have successfully completed the training and exam. The period of certification for Provisional Certified Administrators is three years as designated by the Department. The actual period of designation is solely at the Department's discretion and may be revised as necessary for proper administration of CDBG programs.

Persons who do not successfully complete the Certification exam given during the training will be notified by the Department. Those individuals may request to retake the certification exam by making special arrangements with the CDBG Training Coordinator or CDBG Program Manager at a mutually agreed upon time/date. Following a failed certification exam, a reduced two year certification period is allowed upon successful completion of the exam.

### ***Re-Certification Process***

Re-Certification Training is intended for those persons who are seeking to retain their Certified Administrator designation. The training will provide comprehensive review on CDBG topics and provide Certified Administrators with the necessary information to effectively administer a project.

Recertification Training must be successfully completed prior to the expiration of the Certified Administrator's certification. Certified Administrators must attend Certification Training and pass the Certification Exam in either the third or fourth year of certification to maintain their designation. Certification expiration dates are based upon a specific calendar date and not based on the CDBG Program Year. Certified Administrators may need to be re-certified during an ongoing project.

At the conclusion of the Certification Training, each person seeking to retain their Certified Administrator designation must complete the Certification Exam, covering the primary CDBG topic areas. The exam is

open book, but only the Nebraska CDBG Administration Manual, and any other materials provided during the training, may be used during the testing.

Each person taking the exam must receive a passing score in order to be a CDBG Certified Administrator. Those persons who do not receive a passing score on the exam will be placed on probation (effective the date the Certified Administrator failed the test).

The Department will notify the individuals who successfully complete the exam and issue certification for an additional period of four years (from year of recertification) as designated by the Department. This period of designation is solely up to the Department's discretion and may be revised as necessary for proper administration of CDBG programs.

Persons who do not successfully pass the Certification exam will be notified by the Department. Those individuals may request to retake the certification exam by making special arrangements with the CDBG Training Coordinator or Program Manager at a mutually agreed upon time/date. Following a failed certification exam, a reduced two-year certification period is allowed upon successful completion of the exam.

If on the second attempt the individual does not pass the exam, the Department will issue notice of decertification. If wishing to certify again, decertified individuals will need to complete the next Certification training.

Persons who do not attend Certification Training will be de-certified and will not be allowed to attend Department training for the purposes of certification for one year.

Waiver Provisions: If an individual is unable to attend the scheduled certification training, they may request a waiver, in advance, requesting to attend the next available certification training in order to be in compliance. Requests will be reviewed by the CDBG Manager and CDBG Training Coordinator on a case-by-case basis. Individuals who receive approval, must attend the entire certification training and pass the written exam.

Administrative Extension: On rare occasions, an administrative certification extension may be issued by the Department. This would extend certification expirations to a date designated by the Department.

### ***Conditional Certification***

Persons who would like to become certified during a time when no Certification training is available can apply for a Conditional Certification, allowing an individual to become certified to administer CDBG-funded projects in Nebraska for a short period of time, not to exceed the time between passing the Certification Exam and the time of the next scheduled Certification Training.

In order to receive a Conditional Certified Administrator designation, the individual must schedule a time to take the Certification exam with the CDBG Training Coordinator or an individual authorized by the Department. It is the responsibility of the individual to prepare for the Certification exam. The cost of taking the Certification Exam will be equal to the cost associated with attending the Certification training. Persons who successfully complete the exam will be notified by the Department and receive a letter with additional information about their standing, including the requirement to attend the next available Certification Training.

**NOTE:** cost of attending the training is waived.

If a Certified Administrator fails to attend the next Certification Training, the Conditional Certification will expire immediately after the training event. In this event, the individual will be “de-certified”.

### **CERTIFIED ADMINISTRATOR IN GOOD STANDING AND TYPES OF VIOLATIONS**

To avoid probation or decertification, a Certified Administrator should remain in good standing. In general, the subrecipient relies on the Certified Administrator to remain in good standing and vice versa. This requires a basic understanding of the basic tenants of timeliness and responsiveness and for the Certified Administrator to assist subrecipients in a basic understanding of the CDBG program. A Certified Administrator is considered to be in good standing by achieving the objectives enumerated early in the chapter, and by ensuring the same deficiencies do not occur in multiple monitoring letters, including over multiple grants regardless of the associated subrecipient.

**NOTE:** This list is not all-inclusive and is subject to change without notice. Of paramount consideration is timely and successful completion of CDBG-funded project.

#### ***Violations Affecting Good Standing***

Failure to remain in good standing can result in probation or de-certification. Each documented failure of the Certified Administrator to meet any of the above objectives will result in a violation. Please note, untimely and/or inaccurate submission of documents (including drawdowns and reports), affects the good standing of a Certified Administrator. However, the Department acknowledges that there may be factors outside of the control of the Certified Administrator; subsequently, the nature and the frequency of the incorrect or untimely document submittals will be taken into consideration when issuing violations related to such factor.

#### ***Monitoring Violations***

Monitoring violations can affect a Certified Administrator’s good standing in the CDBG Certified Administrator program. The monitoring visit will address three different areas: Subrecipient Findings, General Findings, and Deficiencies. Each violation has a different effect on a Certified Administrator’s standing:

- **Subrecipient Finding:** These are the requirements that are the primary responsibility of the local governmental entity receiving the CDBG award and involve programmatic errors that cannot be corrected. In most cases, a subrecipient finding will not be counted as a violation on the part of the Certified Administrator. However, if there are repeated Subrecipient Findings, these may result in a violation on the part of the Certified Administrator.

EXAMPLE: if the local government did not issue a check to a contractor within five business days of drawing down CDBG funds, this is a Subrecipient Finding. If the local governmental entity repeatedly fails to follow the five business day rule throughout the course of the project, this may result in a General Finding (which does count towards a violation for a Certified Administrator) as well as a Subrecipient Finding because it is the Certified Administrator’s job to ensure that, in practice, the financial management system at the local level meets the all federal and state rules and regulations.

- **General Finding:** These are any programmatic errors that cannot be corrected. An example is a Project Status report not submitted by the due date. Each general finding will count as 1/3 of a violation against the Certified Administrator. A violation occurs when there are three General Findings against a Certified Administrator. General Findings against a Certified Administrator are cumulative and can come from multiple projects.

EXAMPLE: if a Certified Administrator is working on three different CDBG projects and has one General Finding for each project, this will result in a violation that will remain on the Certified Administrator's record for one year.

- **Deficiencies and Concerns:** These are any errors that can be corrected. Most issues found in a monitoring will fall under this category. The Certified Administrator will have a designated timeframe from the date on the monitoring letter to resolve a deficiency. If the deficiency is not resolved within the identified timeframe, it becomes a violation. Additionally, if the same deficiency is documented multiple times to the same Certified Administrator, even if resolved within the time period, it will become a violation against the Certified Administrator.

### ***Clearing Violations from Certified Administrator's Record***

A violation will remain on the Certified Administrator's record for a period of no more than one year. A violation may be removed from the Certified Administrator's record prior to the end of that term if the Certified Administrator attends a training that addresses the subject matter specific to the violation.

If the Certified Administrator chooses to attend training to clear a violation from his/her record, the Certified Administrator must attend the next relevant training session within six months of the date of the violation notice to successfully remove the violation from the record. If agreed upon by the CDBG Training Coordinator, the Certified Administrator can choose to attend the relevant session(s) of the Department Certification or Recertification trainings or, if there are no Certification or Recertification trainings available within the six month window, the Certified Administrator may contact the CDBG Training Coordinator to schedule an individual training on the violation subject matter.

Additional training will not be available to those Certified Administrators that have reached their fourth violation within a one year period; at this point the Certified Administrators will be placed on a probationary status by the Department.

### ***Violation Notices***

When violations occur, Certified Administrators will receive notices in order to provide an otherwise Certified Administrator in good standing an opportunity to clear the violation(s) by attending relevant training.

Once a Certified Administrator accumulates two documented violations the Certified Administrator will receive a written warning from the CDBG Program Manager.

Written notices are also issued upon the third violation within a one year period; the Certified Administrator's employer and the local contact person for the local unit of government for each open CDBG award the Certified Administrator manages will also be contacted at this time.

Four documented violations within a one year period will result in administrative probation. This notice will be sent certified mail. A copy of this notice will also be sent to the Certified Administrator's employer

and local contacts representing those communities where the Certified Administrator has current and open projects; this communication is also shared with all relevant employees within the Department.

### ***Administrative Probation***

The CDBG Program Manager *may* place a Certified Administrator on administrative probation status for a period of time up to one year once the Certified Administrator has accumulated four violations as described in earlier in this chapter. The CDBG Program Manager shall record the reasons for the probationary status. All notifications of probationary status to a CDBG Certified Administrator will be sent by certified mail, the date of the probationary period starts is the same as the date shown on the letter; the certified letter will advise when the probationary status ends.

The Certified Administrator may continue to manage current CDBG projects to which they are a party, but they may not enter into new contracts during the probationary period.

Once the probationary period expires, and there were no further documented violations during that time; the Certified Administrator may be fully reinstated. A Certified Administrator who has not incurred further violations during the probationary period may be required to attend a CDBG training event before the Certified Administrator is once again considered to be in good standing; the additional training is left to the discretion of the CDBG Program Manager. If one or more violations are documented during the probationary period, the Certified Administrator will not be allowed to clear the violations through training. An additional violation will result in the end of the probationary period and the decertification process will proceed. If a Certified Administrator is placed on probation twice within a three year period, the Department will proceed with the decertification process.

Should the Certified Administrator's certification expire during the probationary period, the individual shall be allowed to participate in the Recertification Training and may become recertified; however, this does not nullify the probationary status or any violations on the record and the Certified Administrator will remain on probation and unable to enter into new CDBG grant administration contracts until the end of the probationary period and the Certified Administrator is once again in good standing.

### ***De-Certification***

Generally, de-certification occurs where an individual fails to properly administer CDBG projects. At the discretion of the Department's CDBG Program Manager, the actions enumerated below in no particular order may automatically result in the implementation of the de-certification process without an initial or additional probationary status. The Department reserves the right, with cause, to add to this list without notice any action detrimental to the efficient conduct and timely execution of a grant award that is attributable to the performance of a Certified Administrator.

- Consistently bypassing federal or state statutes, regulations or policies of the Department, Actions that result in the de-obligation or repayment of grant awards.
- Two or more substantiated written complaints filed by a subrecipient, the Department, agent, elected official or other individual involved in the implementation of federal grants.
- Poor performance by the subrecipient, as evidenced by consistent grant extensions, modifications, project delays, and unresolved monitoring issues.
- Improper procurement of contractors.
- Conflicts of interest which, if disclosed, would result in the loss of the contract.
- Accumulation of an additional violation while on probation, or being placed on probation twice within three years.

- Engaging in conduct involving significant dishonesty, fraud, deceit, or misrepresentation whether or not such activity is a crime.
- Engaging in any conduct that is found significantly prejudicial to the administration of the CDBG program or CDBG grants.
- Failure to attend the mandatory trainings and pass the exam administered at the required trainings.

Decertification will not take place without the due process. Upon de-certification, the individual will not be recognized as a Certified Administrator by the Department and will not be allowed to administer any CDBG grants for a minimum of one year and any Subrecipients that have entered into administration agreements with the Certified Administrator will be notified that they must select another Certified Administrator.

A Certified Administrator, who is decertified for any reason will need to wait one year before attending the Full Certification training. After the conclusion of the one year de-certification period, the person may attend Full Certification training to pursue certification. Individuals who were de-certified may not attend a Recertification Training to become certified. Such individuals will be treated as first-time participants.

#### ***De-certification Process***

The de-certification process shall begin with written notice from the Department's CDBG Program Manager. Such notice will be mailed to the Certified Administrator via certified mail. The notice will advise the Certified Administrator that the Department is seeking de-certification of such administrator. The notice will also include a statement summarizing the reasons for de-certification and it will include a statement that the Certified Administrator is entitled to file a written appeal with the Deputy Director of the Nebraska Department of Economic Development within 20 calendar days from the date the letter was written or postmarked in which to file an appeal with the Deputy Director. The appeal must specifically respond to the reasons for de-certification as set forth in the de-certification notice.

The Department's Deputy Director will make the final decision in regard to a de-certification appeal. The decision of the Deputy Director will be issued via certified mail within 20 calendar working days of the receipt of the appeal.

If a Certified Administrator fails to file an appeal with the Deputy Director within 20 calendar days from the date of the letter, the Department will proceed to de-certify the administrator.

#### ***Working with a De-certified Administrator***

Given their familiarity with the subrecipient and/or project underway, the Department recognizes that de-certified administrators could potentially continue to work on projects with the assistance of a Certified Administrator in good standing. The Department cautions Certified Administrators in good standing that this type of arrangement can result in violations accruing against the Certified Administrator in good standing. Regardless of who actually prepares the documents, errors will result in violations against the Certified Administrator that is the Certified Administrator of record for the stated project. Please note that this is also applicable to Certified Administrators that have been placed on administrative probation and are unable to enter into new contracts. If the Certified Administrator on probation continues to work on new projects under the name of a Certified Administrator in good standing, violations resulting from the work on the project will accumulate on the record of the Certified Administrator in good standing.

## **APPEAL OF DEPARTMENT DECISIONS**

An appeal is a written request directed to the Department by an applicant, subrecipient, or Certified Administrator for reconsideration of a decision made by Department staff.

### ***Procedures***

- 1) An applicant, subrecipient, or a Certified Administrator appealing a decision of Department staff must submit a written appeal requesting a reversal of the decision based upon facts of the situation. This appeal must come to the Department from the Chief Elected Official or the Certified Administrator.
- 2) The CDBG Program Manager will consider the issues and respond within 30 days to the applicant, subrecipient or Certified Administrator.
- 3) If dissatisfied with the CDBG Program Manager's decision, the applicant, subrecipient or Certified Administrator may appeal to the Department Director. The Department Director may, at the request of the parties, schedule a hearing or simply render a written decision. If a hearing is held, all interested parties will participate.
- 4) The purpose of this informal hearing will be to determine the facts of the situation, the appropriateness of the decision, and the justification and the appropriateness of the appeal.
- 5) The Department Director will make a decision within 30 days of the hearing. This written decision will be sent to all parties.
- 6) The Department Director's decision is the final administrative action that will be taken by the Department.

### ***Certified Administrators – Appeal of Violations/Probationary Status***

A Certified Administrator may appeal the issuance of a violation and/or probation in writing to the CDBG Program Manager within 20 working days of the date of the notice of the violation/probationary status. In appealing a violation, the written appeal must include: a description of the violation in question; extenuating circumstances surrounding the violation, if any; and reasons that the Certified Administrator believes that the violation should not be recorded on their administrative record. In appealing imposition of probationary status the written appeal must include: a summary of all violations that led to the Department's decision to put the CDBG Certified Administrator on probation; extenuating circumstances surrounding the Certified Administrator's performance over the year; and reasons that the Certified Administrator believes that probationary status is not warranted. The written appeal must be signed by the Certified Administrator and may include any supporting documentation as deemed necessary by the Certified Administrator.

Decisions by the CDBG Manager in regard to the issuance of a violation or to put a Certified Administrator on Administrative Probation will be final.

## **PROGRAM ADMINISTRATION COMPLAINT PROCESS**

Federal law prohibits housing discrimination based on your race, color, national origin<sup>1</sup>, religion, sex, family status, or disability. Individuals or authorized representatives of individuals who believe they have been the subject of discrimination may file a complaint with the Department of Economic Development (Department) or the Fair Housing and Equal Opportunity Office (FHEO) of the Department of Housing and Urban Development (HUD) located in Kansas City.



***Against Subrecipient Administration***

The Department will receive and act upon written complaints against the subrecipient's administration of the program. Complaints may also be received verbally, and by other means, as necessary where the Department determines that a citizen is not reasonably able to submit a written complaint. In these instances, the Department may convert these complaints into written form.

The Department will implement the following procedures for disposition of complaints against local administration:

- 1) The Department will forward a copy of the written complaint to the subrecipient.
- 2) The Department Complaint Manager will request that the subrecipient respond to the complaint and inform the Department within 30 days of the action to be undertaken to resolve the complaint.
- 3) If the response by the subrecipient is determined to be satisfactory, in consultation with the Complaint Review Committee, the subrecipient will be notified along with the party lodging the complaint.<sup>ii</sup>
- 4) If the response is determined to be inadequate, the subrecipient will be put on official notice by the Department that the response was inadequate, and will be granted 15 days to reconsider and respond to the party lodging the official complaint. The subrecipient will submit to the Department the actions occurring to resolve the complaint.
- 5) The Complaint Review Committee will review the subrecipient's actions to resolve the complaint. If the actions are deemed satisfactory, the subrecipient will be notified along with the party lodging the complaint.
- 6) If the Complaint Review Committee does not consider the subrecipient's actions satisfactory in resolving the complaint, the Department may impose administrative sanctions upon the subrecipient. If imposed, the sanctions will not be lifted until the Department is satisfied with the subrecipient's actions.
- 7) If dissatisfied with the disposition of the complaint, the party may lodge an official appeal of a decision to the Department Director, or in instances where the complaint is connected to a CDBG or HOME funded project, such party may appeal to HUD officials.

***Against State Administration***

The Department will receive and respond to written complaints against state administration of the program. Complaints may also be received verbally, and by other means, as necessary where the Department determines that a citizen is not reasonably able to submit a written complaint. In these instances, the Department may convert these complaints into written form.

The Department will implement the following procedures in response to complaints against state administration of the Program:

- 1) When a complaint is received by a Department official it will be forwarded to the CDBG Program Manager.<sup>iii</sup>
- 2) Within 30 days of receiving the complaint the CDBG Program Manager, in consultation with the appropriate parties, will respond to the complaint.
- 3) Complaints will be responded to in writing.
- 4) If dissatisfied with the disposition of the complaint, the party may lodge an official appeal of a decision to the Department Director.

**To contact the HUD FHEO Office:**

Kansas City Regional Office of FHEO  
U.S. Department of Housing and Urban Development  
Gateway Tower II  
400 State Avenue, Room 200  
Kansas City, Kansas 66101-2406  
(913) 551-6958  
(800) 743-5323  
TTY (913) 551-6972

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<sup>i</sup> National origin discrimination includes discrimination based on a person's inability to speak, read, write, or understand English.

<sup>ii</sup> Since the complainant is receiving a copy of this letter, which is simply our Department's standard, initial response request letter to a program subrecipient, we will particularly note the following for the information of the complainant. This complaint process is not meant to resolve disputes between a homeowner and a contractor about workmanship, product warranties, "punch list" completion, construction completion timing, or any other issues that may arise between homeowners and construction contractors. We emphasize this point because we do not want the complainant homeowner to be operating under the false impression that this complaint process is meant to resolve disputes the homeowner may have with their contractor.

<sup>iii</sup> Depending on which Program the complaint in question originated from, complaint management will be conducted by the Program Manager of the CDBG, HOME, HTF, or NAHTF Programs.

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**PROCESO DE RECLAMOS CONTRA LA ADMINISTRACIÓN DEL PROGRAMA**

La ley federal prohíbe la discriminación de vivienda basándose en su raza, color, nacionalidad<sup>iv</sup>, religión, sexo, estado familiar o discapacidad. Los individuos, o representantes autorizados de los individuos, quienes crean haber sido sujetos a discriminación podrían presentar un reclamo con el Departamento de Desarrollo Económico (el Departamento) o con la Oficina de Vivienda Justa e Igualdad de Oportunidades [FHEO, por sus siglas en inglés] del Departamento de Vivienda y Desarrollo Urbano [HUD, por sus siglas en inglés] ubicado en Kansas City.

***En Contra de la Administración del Beneficiario***

El Departamento recibirá y actuará al recibir los reclamos por escrito en contra de la administración del beneficiario del programa. Los reclamos también pueden ser recibidos de manera verbal y a través de otros medios conforme sea necesario, cuando el Departamento determine que un ciudadano no puede, de manera razonable, presentar un reclamo de manera escrita. En dichos casos, el Departamento podría convertir esos reclamos a un medio escrito.

El Departamento implementará los siguientes procedimientos para la disposición de reclamos en contra de la administración local:

- 1) El Departamento enviará una copia del reclamo escrito al beneficiario.
- 2) El Administrador de Reclamos del Departamento solicitará que el beneficiario responda a la queja e informe al Departamento dentro de 30 días de la acción que se tomará para resolver el reclamo.

- 3) Si se determina que la respuesta del beneficiario es satisfactoria, al hacer una consulta con el Comité de Revisión de Reclamos, se notificará al beneficiario junto con la parte que ha presentado el reclamo.
- 4) Si se determina que la respuesta es inadecuada, el beneficiario recibirá una notificación oficial por parte del Departamento indicando que su respuesta fue inadecuada y se le otorgará 15 días para reconsiderar y responder a la parte que ha presentado el reclamo oficial. El beneficiario luego enviará al Departamento las acciones que tomarán lugar para resolver el reclamo.
- 5) El Comité para Revisión de Reclamos revisará las acciones del beneficiario para resolver el reclamo. Si las acciones se consideran satisfactorias, se notificará al beneficiario junto con la parte que ha presentado el reclamo.<sup>v</sup>
- 6) Si el Comité para Revisión de Reclamos considera que la respuesta del beneficiario es inadecuada para resolver el reclamo, el Departamento podría imponer sanciones administrativas al beneficiario. Si se imponen, dichas sanciones seguirán vigentes hasta que el Departamento esté satisfecho con las acciones del beneficiario.
- 7) Si no estuviese satisfecho con las disposiciones del reclamo, la parte en desacuerdo podría presentar una apelación oficial de la decisión con el Director del Departamento, o en casos en los cuales el reclamo se haga en conexión con proyectos solventados por CDBG o HOME, dicha parte podrían apelar ante los oficiales de HUD.

#### ***En Contra de la Administración Estatal***

El Departamento recibirá y responderá a los los reclamos por escrito en contra de la administración estatal del programa. Los reclamos también pueden ser recibidos de manera verbal y a través de otros medios conforme sea necesario, cuando el Departamento determine que un ciudadano no puede, de manera razonable, presentar un reclamo de manera escrita. En dichos casos, el Departamento podría convertir esos reclamos a un medio escrito.

El Departamento implementará los siguientes procedimientos para responder a los reclamos en contra de la administración del programa:

- 1) Cuando un reclamo sea recibido por un agente del Departamento este será enviado al Administrador del Programa.<sup>vi</sup>
- 2) Dentro de 30 días de haber recibido el reclamo, el Administrado del Programa luego de haber consultado con las partes apropiadas, responderá al reclamo.
- 3) Las respuestas a los reclamos se realizarán por escrito.
- 4) Si no está satisfecho con la disposición del reclamo, la parte en desacuerdo podría presentar una apelación oficial frente al Director del Departamento.

#### **Para contactar a la Oficina Regional de FHEO de HUD en Kansas City:**

Kansas City Regional Office of FHEO  
U.S. Department of Housing and Urban Development  
Gateway Tower II  
400 State Avenue, Room 200  
Kansas City, Kansas 66101-2406  
(913) 551-6958  
(800) 743-5323  
TTY (913) 551-6972

<sup>iv</sup> Discriminación debido a la nacionalidad incluye la discriminación basada en la inhabilidad de la persona para hablar, leer, escribir o entender el inglés.

<sup>v</sup> Debido a que la persona que realiza el reclamo está recibiendo una copia de esta carta, la cual es simplemente una práctica estándar de nuestro Departamento, la carta solicitando una respuesta inicial a un beneficiario del programa, queremos recalcar particularmente la siguiente información: este proceso de reclamo no tiene la finalidad de resolver disputas entre un dueño de una propiedad y un contratista acerca del trabajo, la garantía del producto, la “lista de tareas” a completar, tiempo de culminación de la construcción, o cualquier otro problema que podría surgir entre dueños y contratistas de construcción. Nosotros enfatizamos este punto porque no queremos que los dueños de vivienda que presenten algún reclamo lo hagan bajo la falsa impresión que este reclamo tiene la intención de resolver las disputas que los dueños de viviendas pudiesen tener con sus contratistas.

<sup>vi</sup> Dependiendo del programa en el cual se haya originado el reclamo, la administración de este reclamo será realizada por el Administrador de Programa de los programas CDBG, HOME o NAHTF.

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